

# CHAPTER 5

## Civil Liberties

### REVIEWING THE CHAPTER

#### CHAPTER FOCUS

This chapter surveys quite a number of pressure points that have developed in the American political system regarding the liberties of individuals and the government's involvement in protecting or restricting those liberties. Included among these pressure points are national security, federal versus state enforcement of rights, First Amendment freedoms, and criminal law. After reading and reviewing the material in this chapter, you should be able to do each of the following:

1. Discuss the relationship of the Bill of Rights to the concept of democratic rule of the majority, and give examples of tension between majority rule and minority rights. Explain how the politics of civil liberties may at times become a mass issue, and offer several examples.
2. Describe the conflicts that have arisen between those who claim First Amendment rights and those who are in favor of sedition laws that might restrict freedom of speech. Explain how the Supreme Court attempts to balance competing interests. Describe the various tests that the Court has applied.
3. Explain how the structure of the federal system affects the application of the Bill of Rights. How has the Supreme Court used the Fourteenth Amendment to expand coverage in the federal system? Discuss changing conceptions of the due process clause of the Fourteenth Amendment.
4. List the categories under which the Supreme Court may classify "speech." Explain the distinction between protected and unprotected speech, and name the various forms of expression that are not protected under the First Amendment. Describe the test used by the Court to decide the circumstances under which freedom of expression may be qualified.
5. State what the Supreme Court decided in *Miranda v. Arizona*, and explain why that case illustrates how the Court operates in most such due-process cases.
6. Analyze why the resolution of civil liberties issues involves politics as well as law. Discuss the political factors that influence the Supreme Court when it decides fundamental civil liberties issues.

#### STUDY OUTLINE

- I. The politics of civil liberties
  - A. The objectives of the Framers
    1. Limited federal powers
    2. Constitution: a list of dos, not don'ts
    3. Bill of Rights: specific do nots
      - a) Not intended to affect states
      - b) A limitation on popular rule

- B. Civil rights v. civil liberties
  - 1. Liberties: protections against the abuse of government power
  - 2. Rights: protections against discrimination
  - 3. Sometimes the distinction can be blurred
- II. Rights in conflict: Bill of Rights contains competing rights
  - A. *Sheppard* case (free press versus fair trial)
  - B. *New York Times* and Pentagon Papers (common defense versus free press)
  - C. Kunz anti-Jewish speeches (free speech versus public order)
  - D. Struggles over rights show same pattern as interest group politics
    - 1. War is usually the crisis that has resulted in restrictions for some minorities
      - a) Sedition Act of 1789, during French Revolution
      - b) Espionage and Sedition Acts of World War I
      - c) Smith Act of World War II
      - d) Internal Security Act of 1950, Korean War
      - e) Community Control Act of 1954, McCarthy era
    - 2. Supreme Court has been called on to decide if limits were proper
- III. Culture conflicts
  - A. Original settlement by white European Protestants produced Americanism
  - B. Waves of immigration brought new cultures, conflicts
    - 1. Non-Christians offended by government-sponsored crèches at Christmas
    - 2. English speakers prefer monolingual schools
    - 3. Boy Scouts of America exclude homosexuals from being scout leaders
  - C. Differences even within given cultural traditions
- IV. Applying the Bill of Rights to the States
  - A. Originally, the Bill of Rights applied only to the federal government
    - 1. Affirmed by the Supreme Court in 1883 case
    - 2. Excepting some provisions in Article I, the Constitution was silent on what the states could not do
  - B. Changes in the post-Civil War era
    - 1. War amendments (13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup>) followed
    - 2. Fourteenth contained two critical clauses
      - a) The due process clause
      - b) The equal protection clause
    - 3. Court began (in 1897) to use these clauses to apply certain rights to state government
      - a) Process known as “incorporation”
        - (1) Application of some rights (but not all) to the states
        - (2) No clear answer to which rights are “fundamental”
      - b) Currently incorporated rights
      - c) Newly discovered (or created) rights tend to be automatically incorporated
- V. Interpreting and applying the First Amendment
  - A. Speech and national security
    - 1. Original Blackstone view: no prior press censorship
    - 2. Sedition Act of 1789 followed Blackstone view
    - 3. By 1917–1919, Congress defines limits of expression
      - a) Treason, insurrection, forcible resistance
      - b) Upheld in *Schenck* via test of “clear and present danger”
      - c) Justice Holmes dissents, saying test not met
    - 4. The *Gitlow* case elicits “fundamental personal rights”
    - 5. Supreme Court moves toward more free expression after WWI
      - a) But communists convicted under Smith Act under “gravity of evil”

- b) By 1957, test of “calculated to incite”
- c) By 1969 (Brandenburg), “imminent” unlawful act
- d) 1977 American Nazi march in Skokie, Illinois, held lawful
- e) “Hate” speech permissible but not “hate crime”

B. What is speech?

1. Some forms of speech not fully protected; four kinds
2. Libel: written statement defaming another by false statement
  - a) Oral statement: slander
  - b) Variable jury awards
  - c) Malice needed for public figures
3. Obscenity
  - a) Twelve years of decisions; no lasting definition
  - b) 1973 definition: patently offensive by community standards of average person
  - c) Balancing competing claims remains a problem
  - d) Localities decide whether to tolerate pornography but must comply with strict rules
  - e) Protection extended: nude dancing only marginally protected
  - f) Indianapolis statute: pornography degrading but court disagreed
  - g) Zoning ordinances upheld
  - h) Regulation of electronic Internet (computer-simulated child pornography)
4. Symbolic speech
  - a) Acts that convey a political message: flag-burning, draft card burning
  - b) Not generally protected
  - c) Exception is flag-burning: restriction of free speech
    - (1) Public outrage and congressional action
    - (2) Supreme Court response and the need for an amendment
    - (3) Reluctance of Congress

## VI. Who is a person?

A. Corporations, etc., usually have same rights as individuals

1. Boston bank, antiabortion group, California utility have speech rights
2. More restrictions are allowed, however, on commercial speech
  - a) Regulation must be narrowly tailored
  - b) Or it must serve some clear public interest
3. McCain-Feingold campaign finance reform law of 2002
  - a) Restrictions on “electioneering communications” that refer to candidates within 60 days of an election
  - b) Restrictions upheld despite legal challenges
4. Young people may have fewer rights; Hazelwood; school newspaper can be restricted

## VII. Church and state

A. The free exercise clause: no state interference, similar to speech

1. Law may not impose special burdens on religion
2. But no religious exemptions from laws binding all
3. Some cases difficult to settle
  - a) Conscientious objection to war, military service
  - b) Refusal to work Saturdays; unemployment compensation
  - c) Refusal to send children to school beyond eighth grade

B. The establishment clause

1. Jefferson’s view: “wall of separation”
2. Congress at the time: “no national religion”
3. Ambiguous phrasing of First Amendment

4. Supreme Court interpretation: “wall of separation”
  - a) 1947 New Jersey case (reimbursements)
    - (1) Court: First Amendment applies to the states
    - (2) Court: State must be neutral toward religion
  - b) Later decisions struck down
    - (1) School prayers (voluntary, nonsectarian, delivered by a rabbi or minister or student elected by other students)
    - (2) Teaching of creationism
    - (3) In-school released-time programs
  - c) Public aid to parochial schools particularly controversial
    - (1) Allowed: aid for construction of buildings, textbook loans, tax-exempt status, state deductions for tuition, computers, and sign language interpreters
    - (2) Disallowed: teacher salary supplements, tuition reimbursements, various school services, money to purchase instructional materials, special districts
    - (3) Though the Court can (and does) change its mind on these matters
    - (4) Recent controversy: school vouchers in Cleveland, OH
      - (a) State offered money to families (especially poor ones) whose students were attending failing schools
      - (b) Voucher could be used for another public school or a private school
      - (c) Court upheld the program as aid to families, not schools, or religion
  - d) Development of a three-part test for constitutional aid
    - (1) It has a strictly secular purpose
    - (2) It neither advances nor inhibits religion
    - (3) It involves no excessive government entanglement
  - e) Failure of the Court’s test to create certainty in our law
    - (1) Nativity scenes, menorahs, and Christmas trees
    - (2) Seeming anomalies: prayer in Congress, chaplains in the armed services, “In God We Trust” on currency
    - (3) Deep division/confusion among members of the Court

### VIII. Crime and due process

- A. The exclusionary rule
  1. Most nations punish police misconduct apart from the criminal trial
  2. United States punishes it by excluding improperly obtained evidence
  3. Supreme Court rulings
    - a) 1949: declined to use exclusionary rule
    - b) 1961: changed, adopted it in *Mapp* case
- B. Search and seizure
  1. When can “reasonable” searches of individuals be made?
    - a) With a properly obtained search warrant with probable cause
    - b) Incident to an arrest
  2. What can police search incident to an arrest?
    - a) The individual being arrested
    - b) Things in plain view
    - c) Things under the immediate control of the individual
  3. What of an arrest while driving?
    - a) Answer changes almost yearly
      - (1) 1979 ruling: cannot search suitcase in car of arrested person
      - (2) 1981 ruling: cannot search “closed, opaque container” either

- (3) 1982 ruling: can search any place where there is probable cause to suspect the presence of contraband
- (4) Further extensions of police power
  - (a) Can also search things people are carrying in car
  - (b) Car can be searched if “reasonable suspicion” develops during traffic violation stop
- b) Court attempts to protect a “reasonable expectation of privacy”
- c) Privacy in body and home but not from government supervisor or private employer

C. Confessions and self-incrimination

- 1. Constitutional ban originally against torture and “third degree” tactics by police
- 2. Extension of rights in the 1960s
  - a) The *Miranda* case
    - (1) Confessions presumed involuntary unless informed of particular rights
    - (2) *Miranda* warnings now read by police
  - b) Applications of *Miranda*
    - (1) Right to a lawyer in police lineup
    - (2) Right to a lawyer in mental competence examinations
    - (3) Exclusion of confessions without lawyer present
    - (4) Confessions to undercover officer posing as cellmates permitted
    - (5) Exclusion of confessions which result from questioning before and after *Miranda* warnings are given

D. Relaxing the exclusionary rule

- 1. Positions taken on the rule
  - a) Any evidence should be admissible
  - b) Rule was useful, but had become too technical to be an effective deterrent
  - c) Rule a vital safeguard to essential liberties
- 2. Courts have moved to adopt the second position
  - a) Limiting coverage
  - b) Allowing for exceptions. Examples:
    - (1) good faith exception
    - (2) public safety exception
    - (3) inevitable discovery exception

E. Terrorism and civil liberties

- 1. USA Patriot Act
  - a) Telephone and Internet taps, voice mail seizure
  - b) Grand jury information exchange
  - c) Detainment of non-citizens and deportation of aliens
  - d) Money laundering
  - e) Crime and punishments
- 2. Executive order for use of military courts
  - a) Trial before commission of military officers
    - (1) May be held in secret
    - (2) Conviction based on a two-thirds vote of commission members
    - (3) Appeals to the secretary of defense and president (not civilian courts)
  - b) Potential uses and associated controversies
    - (1) Detainees in Guantanamo—Taliban regime, Afghanistan
    - (2) Detainees in Guantanamo—al Qaeda terrorist network
- 3. Legal issues and developments
  - a) The Second World War position relating to “unlawful combatants”
  - b) Bush administration issue: neither combatants nor terrorists

- c) Supreme Court rulings
  - (1) Accepted the legitimacy of the right to make legal challenges
  - (2) American citizens are entitled to a hearing before a neutral decision-maker in order to challenge the basis for detention
    - (a) 2006 law and military commissions
    - (b) Composed of five military officers, selected by the secretary of defense
    - (c) Certain fundamental rights applicable to defendants
    - (d) Appeals can be made to the D.C. circuit and the Supreme Court
- d) Legislation
  - (1) Patriot Act renewed with few changes
  - (2) 2005 law featuring federal standards for licenses

4. Searches without warrants

- a) Warrantless searches of foreign spies common among presidents of both parties
- b) 1978 FISA required approval by a special court
  - (1) Seven judges selected by the Chief Justice
  - (2) Would use a lower standard, “probable cause” not required
- c) National newspapers revealed secret NSA program that operated outside FISA
- d) White House changed program despite strong legal position

## KEY TERMS MATCH

Match the following terms and descriptions:

1. The government suppression of American leftists after the 1917 Bolshevik Revolution in Russia	a. actual malice
2. A Federalist bill of 1789 criminalizing criticism of government	b. Hugo Black
3. A 1940 act criminalizing the advocacy of violent revolution	c. “clear and present danger” test
4. A 1950 act requiring the registration of all communists	d. Community Control Act
5. A 1954 act denying legal rights to the Communist party	e. conscientious objector
6. Term which describes the process whereby the Supreme Court applies provisions of the Bill of Rights to the states	f. creationism
7. A Supreme Court formula to legitimate the abridgement of the right of free speech	g. establishment clause
8. Harming another by publishing defamatory statements	h. exclusionary rule
9. Category of individuals who must show material is false and printed with actual malice to win a libel case	i. FISA
	j. free exercise clause
	k. freedom of expression
	l. freedom of religion
	m. <i>Giltow v. New York</i>
	n. good-faith exception
	o. incorporation
	p. Internal Security Act
	q. Thomas Jefferson
	r. least means

10. A government action to prevent rather than punish certain expressions	s. libel
11. The supposed superiority of rights of expression over other constitutional rights	t. <i>Mapp v. Ohio</i>
12. The use of only minimal measures to restrict potentially dangerous expression	u. <i>Miranda</i>
13. Case in which the Supreme Court decided to apply the exclusionary rule to state and local law enforcement officers	v. preferred position
14. The First Amendment clause guaranteeing religious freedom	w. prior restraint
15. The First Amendment clause prohibiting an official religion	x. probable cause
16. Justice who argued the First Amendment protects all publications, even wholly obscene ones	y. public figures
17. A teaching on the origin of the world found to be religiously inspired	z. Red scare
18. A special court that approves electronic eavesdropping on foreign spies	aa. released time
19. A period during the public school day when students get religious instruction	bb. search warrant
20. The prohibition against the use of illegally obtained evidence in court	cc. Sedition Act
21. A written authorization to police officers to conduct a search	dd. Smith Act
22. The legal basis for the issuance of a search warrant	ee. symbolic speech
23. A Supreme Court case that led to rules that police officers must follow in warning arrested persons of their rights	ff. wall-of-separation principle
24. Individual who first penned the phrase “wall of separation” in a private letter	
25. One who refuses military service on religious or ethical grounds	
26. Case in which the Supreme Court first applied the First Amendment to the states	

27. Part of the First Amendment protecting freedom of speech, press, assembly, and the right to petition the government
28. Part of the First Amendment protecting the free exercise of religion and prohibiting an establishment of religion
29. Admission of illegally obtained evidence if illegality results from a technical or minor error
30. Legal term suggesting something was published with reckless disregard for the truth, or with the knowledge that it was false
31. An act that conveys a political message, such as burning a draft card to protest the draft
32. An interpretation of part of the First Amendment that prevents government involvement with religion

## DATA CHECK

### FIGURE 5.1 (Page 97): Annual Legal Immigration, 1850–2005

1. In approximately what years do the statistics for annual immigration reach their peak?  
\_\_\_\_\_
2. What was the apparent impact of World War I on immigration?  
\_\_\_\_\_
3. What was the apparent impact of the Immigration and Reform and Control Act of 1986?  
\_\_\_\_\_
4. Where does the number of annual immigrants appear to hit its lowest point in the Figure?  
\_\_\_\_\_

## PRACTICING FOR EXAMS

### TRUE/FALSE QUESTIONS

Read each statement carefully. Mark true statements *T*. If any part of the statement is false, mark it *F*, and write in the space provided a concise explanation of why the statement is false.

1. T F In practice, there is no clear line between civil rights and civil liberties.  
\_\_\_\_\_
2. T F The Constitution and the Bill of Rights contain a list of competing rights and duties.  
\_\_\_\_\_
3. T F The inevitable debates which accompany a time of war have generally been met with expansion in First Amendment liberties by Congress.  
\_\_\_\_\_
4. T F The Internal Security Act of 1950 required members of the Communist Party to register with the government.  
\_\_\_\_\_
5. T F When legislatures have chosen to restrict freedom of speech, the Supreme Court has had a general tendency to oppose such efforts and defend the First Amendment rights of citizens.  
\_\_\_\_\_
6. T F Sedition laws are no longer used today.  
\_\_\_\_\_
7. T F The Supreme Court held that the Boy Scouts of America violated federal law when the organization refused to allow homosexuals to be scout leaders.  
\_\_\_\_\_
8. T F The process whereby the United States Supreme Court applies amendments to the Bill of Rights is known as "incorporation."  
\_\_\_\_\_
9. T F The right to bear arms (Second Amendment) has been applied to the states.  
\_\_\_\_\_
10. T F The ban on excessive bail and fines (Eighth Amendment) has not been applied to the states.  
\_\_\_\_\_
11. T F Blackstone's *Commentaries* took the position that the press should not be restricted or punished for what it prints.  
\_\_\_\_\_
12. T F The Sedition Act of 1798 entrusted judges to convict persons charged under the Act.  
\_\_\_\_\_

13. T F None of the convictions under the Sedition Act of 1789 reached the United States Supreme Court by appeal.

---

14. T F Charles T. Schenck was convicted of planting bombs in key government buildings.

---

15. T F Justice Holmes' rule for identification of dangerous speech came to be known as the "clear and probable danger test."

---

16. T F In the *Gitlow* case, the Supreme Court incorporated the freedom of speech and of the press to the states via the due-process clause of the Fourteenth Amendment.

---

17. T F In 1977, the Court upheld the right of leaders in Skokie, Illinois, to ban a group of American Nazis from marching in a street parade.

---

18. T F Nazi swastikas and burning crosses can be banned from public display by state legislatures via "hate crime legislation."

---

19. T F Most Supreme Court justices do not interpret the words "no law" in the First Amendment to literally mean "no law."

---

20. T F If you sue for libel and it turns out the statements in question were true, you cannot win no matter how badly they have harmed you.

---

21. T F In the United States, it is generally very difficult for public figures to win a libel suit.

---

22. T F Nudity and sex are not, by definition, obscenity.

---

23. T F The Court has considered nude dancing a form of "speech" or "expression."

---

24. T F The Court upheld a statute banning total nude dancing.

---

25. T F In 1997, the Court upheld a congressional ban on "virtual" child pornography.

---

26. T F The House and the Senate passed a law banning flag-burning by huge majorities.

---

27. T F The government can place more restrictions on commercial than noncommercial speech.

---

28. T F When students are in school, they do not have constitutional rights to freedom of speech or expression.

---

29. T F The Court upheld a Florida city's ban on animal sacrifices that were being made by members of an Afro-Caribbean religion.

---

30. T F If a person claims membership in an Indian tribe and argues that he/she should be able to use the drug peyote in religious ceremonies, the Supreme Court will uphold their right to do so.

---

31. T F Draft laws have only recently made exceptions for conscientious objectors.

---

32. T F The Supreme Court's first attempt at interpreting the Establishment clause was in 1947.

---

33. T F Recently, the Court declared a school voucher program which especially benefited the poor in Cleveland "unconstitutional."

---

34. T F The House and the Senate have opened with prayer every session since 1789.

---

35. T F Initially, the Supreme Court refused to apply the exclusionary rule to the states.

---

36. T F If you are arrested, the police can search you and things and places under your immediate control without a warrant.

---

37. T F Private employers have little freedom to search an employee's desk and files.

---

38. T F The conviction of Ernesto A. Miranda was based upon a written confession.

---

39. T F Thanks to the Supreme Court, Miranda never served time for the rape and kidnapping for which he was originally convicted.

---

40. T F Under the USA Patriot Act, the government can tap your telephone and use of the Internet without a court order.

---

41. T F After the attacks of 9/11, President Bush proclaimed a national emergency and gave military courts jurisdiction over cases involving non-citizens who were suspected terrorists.

---

42. T F Military commissions can operate in secret.

---

43. T F The verdict of a military commission can be appealed to a civilian court.

---

44. T F The Bush administration has taken the position that members of the alQaeda terrorist movement can be tried by military tribunals as “unlawful combatants.”

---

45. T F More than a few courts have ruled that the president has the inherent authority to conduct warrantless searches to obtain foreign intelligence information.

---

## MULTIPLE CHOICE QUESTIONS

Circle the letter of the response that best answers the question or completes the statement.

1. The Framers saw no need for a bill of rights because
  - a. in their view, civil liberties were a matter for the states, not for the federal government.
  - b. they were convinced that in a democratic republic, public opinion was a sufficient protection.
  - c. no one bothered to even bring up the topic at the Convention.
  - d. they assumed that the federal government could not do things that it was not explicitly authorized to do.
  - e. their chief concern was protecting public order, not guaranteeing rights.
2. The authors suggest that the Founding Fathers would have probably never imagined that the Bill of Rights would
  - a. affect what the federal government does.
  - b. affect what state governments do.
  - c. become so popular with the states.
  - d. be ratified with so little debate.
  - e. be amended in any way.
3. The leading entrepreneur of the Red scare around the time of World War I was
  - a. Joseph McCarthy.
  - b. A. Mitchell Palmer.
  - c. Kate Richards O’Hare.
  - d. Theodore Roosevelt.
  - e. Woodrow Wilson.
4. Which of the following statements is *incorrect*?
  - a. The Bill of Rights was added many years after the Constitution was signed.
  - b. The liberties enumerated in the Bill of Rights applied only to the federal government.
  - c. Initially, the Supreme Court refused to apply the first ten amendments to the states.
  - d. The first amendments that were applied to the states appeared after the Civil War.
  - e. None of the above.

5. Which amendment prohibited the depravation of life, liberty and property without “due process of law?”
  - a. Tenth.
  - b. Thirteenth.
  - c. Fourteenth.
  - d. Fifteenth.
  - e. Twenty-sixth.
6. In the first case where the Supreme Court began applying certain rights to state governments, the decision involved
  - a. freedom of speech.
  - b. the taking of private property.
  - c. free exercise of religion.
  - d. the establishment of religion.
  - e. voting rights.
7. In applying (or incorporating) specific rights to the states, the Court has considered whether such rights are
  - a. integral.
  - b. extremely vital.
  - c. secular.
  - d. majoritarian.
  - e. fundamental.
8. Which of the following sections of the Bill of Rights has been applied in its entirety to the states?
  - a. First Amendment.
  - b. Second Amendment.
  - c. Third Amendment.
  - d. Fifth Amendment.
  - e. Seventh Amendment.
9. Blackstone argued that the press should be free
  - a. from any restrictions whatsoever.
  - b. only when it published the truth.
  - c. from censorship prior to publication.
  - d. from seditious libel restrictions alone.
  - e. from libel laws regarding government officers.
10. The debate between the Federalists and the Jeffersonians over the Sedition Act was largely a debate over
  - a. the fundamentals of individual liberty.
  - b. the role of the press in a democratic republic.
  - c. states' rights.
  - d. the interpretation of elastic clauses in the Constitution.
  - e. the role of government in the economy.
11. The Jeffersonian Republicans believed that the press
  - a. should be free from governmental controls.
  - b. should be free from governmental controls except when the nation is at war.
  - c. should be punished by the federal government for slander and defamation.
  - d. could be punished by federal courts but only when malice was shown.
  - e. could be punished by the states for slander and defamation.

12. In 1919, the Supreme Court upheld the conviction of Charles T. Schenck, who mailed circulars urging men to resist the draft, on the basis of the \_\_\_\_\_ test.

- bad tendency
- clear and probable danger
- clear and present danger
- articulable suspicion
- probable cause

13. The effect of the “clear and present danger” rule seems to have been to

- clarify the law but not keep anyone from prison.
- greatly clarify and expand the scope of free expression.
- increase convictions for sedition and incitement in the states.
- make guarantees of freedom of expression as binding on state as on federal officials.
- bring the process of incorporation to its logical conclusion.

14. The First Amendment was not made applicable to the states via the Fourteenth Amendment until the

- 1920s.
- 1930s.
- 1940s.
- 1950s.
- 1970s.

15. The Supreme Court’s rulings regarding communists who advocated the overthrow of the government were eventually effected by

- presidential rebukes and legislative resolutions.
- diminished popular concern about communism.
- condemnation from the American Bar Association.
- change in the Court’s membership.
- B and D.

16. The 1969 conviction of KKK leader Clarence Brandenburg was overturned by the Court because the “danger” or “illegal action” that he called for was not

- imminent.
- properly regulated.
- without merit.
- patently offensive by contemporary community standards.
- B and D.

17. The display of an odious symbol, such as a swastika or a burning cross, has been deemed by the Supreme Court to be

- punishable as a hate crime.
- punishable as incitement.
- an unconstitutional act.
- protected by the Constitution.
- not a case for Supreme Court review.

18. *Libel* is defined as

- stating something untrue about another person.
- writing something false about someone without their knowledge.
- an oral statement defaming another person.
- a written statement defaming another person.
- maliciously intending to defame a public official.

19. A successful libel suit is more likely to be filed by
  - a. an elected official.
  - b. an army general.
  - c. a school teacher.
  - d. a well-known celebrity.
  - e. a famous artist or literary figure.
20. Justice Hugo Black and a few others took the position that obscenity is
  - a. protected by the First Amendment.
  - b. easy to define, but difficult to punish.
  - c. difficult to define, but easy to punish.
  - d. subject to federal but not state prosecution.
  - e. subject to state but not federal prosecution.
21. The definition of what is obscene and therefore not a form of protected speech
  - a. is left almost entirely up to localities.
  - b. can be decided by localities but only within narrow limits.
  - c. is finely detailed in the Court's decision in the *Roth* case.
  - d. has to be decided by the Supreme Court on pretty much a case-by-case basis.
  - e. has to be decided by the Supreme Court on the basis of reasonably clear guidelines.
22. Under the current law, the Supreme Court would allow a city to
  - a. institute a complete ban on nudity in films and books.
  - b. regulate nudity as pornography.
  - c. adopt a zoning ordinance restricting where "adult" movie theaters can be located.
  - d. define pornography in terms of material that degrades women.
  - e. ban the use of the Internet.
23. One controversial rule of the Court is that free expression is not absolute, but occupies a higher position than many other constitutional rights. This is known as the "\_\_\_\_\_ position" approach to speech.
  - a. incorporated
  - b. neutrality
  - c. least-restrictive means
  - d. relaxed
  - e. preferred
24. The Supreme Court struck down a 1996 law that addressed the issue of child pornography because it attempted to ban images that were
  - a. graphic.
  - b. violent.
  - c. psychologically harmful.
  - d. in the public domain.
  - e. computer simulated.
25. The Supreme Court has ruled that one of the following sorts of symbolic speech is protected by the Constitution. Which one?
  - a. Burning draft cards.
  - b. Burning the flag.
  - c. Making obscene gestures toward a police officer.
  - d. Sleeping in a public park to draw attention to the plight of the homeless.
  - e. Protesting loudly directly outside a court building.

26. Which of the following statements regarding government limitations on commercial and noncommercial speech is correct?

- Commercial speech cannot be limited as much.
- Commercial speech can be limited more.
- Noncommercial speech can be limited more.
- Neither can be limited more than the other.
- Commercial speech can only be limited in matters regarding public health.

27. Under the McCain –Feingold campaign finance reform law, organizations cannot pay for radio or television spots that refer to candidates for federal office

- within sixty days before the election.
- more than sixty days before the election.
- without consent from the Federal Election Commission.
- without a waiver from a court.
- in a negative manner.

28. In general, high school students have the same rights as adults. An exception is when

- their actions are specifically prohibited by the Constitution.
- their actions offend other students.
- they exercise these rights as individuals rather than as part of a school-sponsored activity.
- some form of symbolic speech is involved.
- their exercise of these rights impedes the educational process.

29. The First Amendment states that Congress may not make any law prohibiting the free exercise of religion. It also specifically states that

- church and state must be clearly separate.
- there will be no official church in the United States.
- citizens are exempt from laws binding other citizens when the law goes against their religious beliefs.
- Congress may not make any law respecting an establishment of religion.
- nonsectarian, voluntary, or limited prayer is permissible in public schools.

30. Conscientious objectors may be excused from participation in war even if they do not believe in a Supreme Being so long as there is evidence that

- they are guided by a deeply held moral or ethical code.
- they have never been arrested in an anti-war protest.
- their parents also objected to war.
- ten elected officials support their exclusion from the draft.
- they strongly object to particular wars, not all wars in general.

31. A state cannot require you to send your children to public schools beyond the \_\_\_\_ grade.

- fifth
- sixth
- seventh
- eighth
- tenth

32. The phrase “wall of separation” between church and state comes from

- the pen of Thomas Jefferson.
- the Bill of Rights.
- the debates in the First Congress that drafted the Bill of Rights.
- the Fourteenth Amendment.
- George Washington’s farewell address.

33. Interestingly, the wording of the Establishment clause that was originally debated by Congress was \_\_\_\_\_ than what finally emerged.

- more abstract
- longer and even more confusing
- more brief
- quite different and much plainer
- more partial to the federal government

34. The Court has applied the “wall of separation” metaphor to strike down

- nonsectarian prayers in public schools.
- voluntary prayers in public schools.
- invocations given by rabbis or ministers at public school graduation ceremonies.
- students, elected by other students, to lead voluntary prayer at public school graduation ceremonies.
- all of the above.

35. The Supreme Court’s controversial three-part “test” for Establishment clause cases focuses specifically on

- whether there is a secular purpose for an action.
- the effect of an act advances or inhibits religion.
- whether an action fosters excessive governmental entanglement with religion.
- all of the above.
- none of the above.

36. Instead of using the exclusionary rule, our courts might do as European courts do and

- refuse to include illegally obtained evidence at a trial.
- ignore the legality or illegality of the method used to obtain the evidence.
- levy civil or criminal penalties against law enforcement officers who obtain evidence illegally.
- refuse to hear cases tainted with official illegality.
- use the rule only when cases do not involve murder.

37. The exclusionary rule was not officially applied to the states until the

- 1940s.
- 1950s.
- 1960s.
- 1980s.
- 1990s.

38. Some police departments have tried to get around the need for *Miranda* warnings by training their officer to

- read the warnings quickly and refuse to answer subsequent questions.
- only use the warnings when there is a threat to the safety of the public.
- limit the use of warnings to newly hired officers.
- question suspects, obtain confessions, read the warnings, then repeat the same questions.
- read the warnings and question suspects regardless of their expressed desire not to talk.

39. All of the following are true of the USA Patriot Act (passed in the aftermath of the attack of 9/11) *except*

- the penalties for terrorist crimes were increased.
- the government can seize voice mail without a court order.
- information in secret grand jury hearings can be shared by officials.
- non-citizens who pose a national security risk can be detained for up to seven days.
- the government can tap Internet communications with a court order.

40. Which statement accurately describes the legal status of complaints concerning the detainment of “unlawful combatants” in Guantanamo Bay?
  - a. American courts cannot consider legal challenges regarding the detentions.
  - b. American courts can consider legal challenges regarding the detentions.
  - c. The Supreme Court has provided lower courts with specific guidelines for petitions.
  - d. It is clear that the Supreme Court will rule against the government in these cases.
  - e. It is clear that the Supreme Court will rule in favor of the government in these cases.
41. One potentially controversial aspect of a 2005 law regarding Homeland Security might be something like
  - a. a national ID card.
  - b. optical scanning in airports.
  - c. permanent fingerprint files in state drivers’ license offices.
  - d. armed guards in all public buildings.
  - e. loyalty oaths for political office.

## ESSAY QUESTIONS

Practice writing extended answers to the following questions. These test your ability to integrate and express the ideas that you have been studying in this chapter.

1. Explain the process whereby the Fourteenth Amendment was utilized to incorporate provisions of the Bill of Rights to the states. Give specific attention to the Supreme Court’s decisions in *Gitlow* and *Palko*.
2. Explain the facts of Charles T. Schenck’s case, the test that was created by Justice Holmes and the ruling of the Supreme Court.
3. Identify four types of speech which are not automatically granted full constitutional protection.
4. Define libel and explain how libel laws are applied to public figures in the United States.
5. Explain how the issue of flag burning played out in Congress and the Supreme Court.
6. Identify 7-8 practices which the Supreme Court has not allowed under its interpretation of the Establishment clause.
7. What are the considerations featured in the Court’s three part test for potential violations of the Establishment clause?
8. What are two ways that court systems can handle the problem of evidence that is seized illegally by law enforcement officers?
9. Summarize the scope of a warrantless police search following an arrest.
10. Summarize the story of Ernesto Miranda and the Supreme Court’s decision in his case.
11. Identify some examples of ways in which the Supreme Court has “relaxed” the Exclusionary Rule in recent years.
12. Describe 4-5 provisions in the USA Patriot Act.
13. Discuss the controversy that emerged in 2005 regarding warrantless searches by the government, the FISA and national security.

## ANSWERS TO KEY TERMS MATCH QUESTIONS

1. z
2. cc
3. dd
4. p
5. d
6. o
7. c
8. s
9. y
10. w
11. v
12. r
13. t
14. j
15. g
16. b
17. f
18. i
19. aa
20. h
21. bb
22. x
23. u
24. q
25. e
26. m
27. k
28. l
29. n
30. a
31. ee
32. ff

## ANSWERS TO DATA CHECK QUESTIONS

1. 1991.
2. Immigration statistics dropped considerably.
3. There was a boom in immigration.
4. 1945 (World War II).

## ANSWERS TO TRUE/FALSE QUESTIONS

1. T
2. T
3. F Congress has tended to restrict First Amendment liberties during war.
4. T
5. F To the contrary, courts have tended to uphold the legislatures.
6. F They are still used today, although rarely.
7. F The Court ruled in favor of the Scouts, allowing them to continue to exclude homosexuals from membership.
8. T
9. F It has not.
10. T
11. F Blackstone thought the press should be regulated by subsequent punishment, but not by prior restraints.
12. F The Act was considered an improvement because it entrusted this decision to the jury instead of a judge.
13. T
14. F Schenck merely passed out printed materials calling for resistance to the selective service laws.
15. F It was known as the “clear and present danger” test.
16. T
17. F The Court ruled the Nazi’s had the right to assemble peacefully and march.
18. F Such speech may very well be offensive, but it cannot be banned simply for being such.
19. T
20. T
21. T
22. T
23. T
24. T
25. F They ruled against the ban as there were no real children involved, only computer generated, or virtual images.

26. T

27. T

28. F The do have such rights so long as they do not threaten or harm the rights of other students and they do not impede the business of the school.

29. F The Court struck down the ban.

30. F The Court will actually disagree and uphold any criminal punishments which follow.

31. F The draft laws have always exempted conscientious objectors.

32. T

33. F The Court ruled such programs “constitutional” so long as there is “real choice” among private schools.

34. T

35. T

36. T

37. F Private employers have a great deal of freedom to search your desk and files.

38. T

39. F Miranda was retried, convicted and served 9 years in prison.

40. F The government must first obtain a court order to do such.

41. T

42. T

43. F An appeal can be made to the secretary of defense and the president, but not to a civilian court.

44. T

45. T

## **ANSWERS TO MULTIPLE CHOICE QUESTIONS**

1. d
2. b
3. b
4. e
5. c
6. b
7. e
8. a
9. c
10. c
11. e

12. c
13. a
14. a
15. e
16. a
17. d
18. d
19. c
20. a
21. a
22. c
23. e
24. e
25. b
26. b
27. a
28. e
29. d
30. a
31. d
32. a
33. d
34. e
35. d
36. c
37. c
38. d
39. b
40. b
41. a